CITY OF ALAMEDA
Memorandum

To: Honorable Mayor and
Members of the City Council

Honorable Chair and
Members of the Community Improvement Commission

From: Lisa Goldman
Acting City Manager/Acting Executive Director

Date: February 15, 2011

Re: Approve Execution of Estoppel Certificates and Consent to Assignments of the Following Documents (collectively, "Alameda Landing Agreements") to Catellus Alameda Development, LLC ("Catellus") Conditioned upon Receipt of Entity Relationship Information:

1. The Disposition and Development Agreement Dated December 5, 2006, By and Between the Community Improvement Commission of the City of Alameda ("CIC") and Palmtree Acquisition Corporation ("PAC"), as Amended By (a) the First Amendment to Disposition and Development Agreement (Alameda Landing Mixed Use Project) Dated as of December 4, 2007, and (b) the Second Amendment to Disposition and Development Agreement Dated as of June 4, 2008 (Collectively, the "Alameda Landing DDA")

2. The Development Agreement (Alameda Landing Mixed Use Commercial Project) dated as of January 16, 2007, By and Between the City of Alameda ("City") and PAC, as Amended by the First Amendment to Development Agreement (Alameda Landing Mixed Use Commercial Project) Dated as of December 4, 2007 (Collectively, the "Commercial DA")

3. The Development Agreement (Alameda Landing Mixed Use Residential Project) Dated as of January 2, 2007, By and Between the City and PAC (the "Residential DA")

4. The Right of Entry for Preliminary Work (Alameda Landing – Testing/ Investigation) Permit, Dated August 31, 2009, By and Between PAC, as Permittee, and the CIC, as Amended By That Certain Right of Entry for Preliminary Work (Alameda Landing – Testing/Investigation), Dated August 30, 2010 (the "Permit")

5. Agreement of Property Exchange and Joint Escrow Instructions, Dated as of May 13, 2008, By and Among PAC, the Peralta Community College District (the "District"), and the CIC, as Amended by (a) the First Amendment to Agreement of Property Exchange and Joint Escrow Instructions Dated as of June 3, 2008, and (b) the Second Amendment to Agreement of Property Exchange and Joint Escrow Instructions Dated as of June 24, 2008 (Collectively, the "Property Exchange Agreement")

BACKGROUND

On December 4, 2006, the City Council and Community Improvement Commission (CIC) approved the Alameda Landing DDA with Palmtree Acquisition Corporation (PAC) for redevelopment of the former Fleet Industrial Supply Center (FISC). PAC is a subsidiary of ProLogis, a Maryland real estate investment trust (successor by merger to Catellus Development Corporation). The project, called Alameda Landing, consists of 400,000 square feet of office uses, 300,000 square feet of retail development, 20,000 square feet of health club uses, and up to 300 homes.

The Alameda Landing DDA was amended in December 2007 to provide, among other things, a re-designed waterfront promenade. Revisions to the waterfront park were necessary due to the condition of the existing wharf and cost to seismically retrofit and stabilize the piers. A second amendment to the Alameda Landing DDA in June 2008 provided for, among other things, the reimbursement of expenses associated with the early expenditure of funds for acquisition of the Stargell Avenue rights-of-way and Stargell construction activities.

DISCUSSION

A. Summary of Requested Assignment of Alameda Landing Agreements

Representatives of TPG Partners VI, L.P. ("TPG VI") and PAC have informed the CIC and the City that ProLogis has entered into an agreement to sell certain assets of PAC, including the Alameda Landing Agreements, to Santa Fe Acquisition Company, LLC, ("Santa Fe") a newly formed entity owned by TPG VI and its affiliates. TPG VI has requested that the City and CIC approve the assignment to Catellus of the Alameda Landing Agreements (Exhibit 1). TPG VI and Catellus have provided staff an organizational chart showing their structure (Exhibit 2) and have provided formation and registration documents filed with the States of California and Delaware, but have not yet provided operating agreements or other documentation evidencing the ownership relationships between TPG VI, Santa Fe and Catellus. As currently described to staff, the following provides a summary of the legal entities and their relationships to each other as they relate to the proposed assignment and assumption of the Alameda Landing Agreements:

- **Palmtree Acquisition Corporation (PAC)**. The "Developer" under (1) the Alameda Landing DDA with the CIC, and (2) the Commercial DA and the Residential DA, both with the City. PAC is also the "Permittee" under the Permit with the CIC, and "Palmtree" under the Property Exchange Agreement with the CIC and the District. Upon assignment of the foregoing Alameda Landing Agreements, the Developer under the Alameda Landing DDA, Commercial DA and Residential DA, Permittee under the Permit, and Palmtree under the Property Exchange Agreement will become Catellus instead of PAC.

- **ProLogis**. A Maryland real estate investment trust and current owner of PAC. Pursuant to the sale described above, ProLogis is selling certain assets of PAC to Santa Fe, an affiliate of TPG VI, including the Alameda Landing project.

- **TPG Partners VI, L.P. (TPG VI).** Representatives of TPG VI have informed the CIC and the City of the following: TPG VI is the current investment "fund" that TPG uses to make investments. The owners of TPG VI are TPG Capital prinicipals and multiple institutional and large private investors. The investors commit capital to a particular "fund", then TPG Capital invests the money on their behalf. TPG VI or affiliates will be the Managing Member that will hold the majority interest (over 90%) in Santa Fe. TPG VI has substantial uncalled capital commitments, with amounts in the high ten figures as of the end of 2010. With TPG VI's financial resources, no outside equity or financial partner is needed. Founded in 1992, this private investment firm has more than $48 billion of assets under management, and has 14 offices around the globe with its largest in San Francisco, California. Pursuant to the sale described above, TPG VI, through its majority owned subsidiary, Santa Fe, will acquire certain assets of PAC, including the Alameda Landing project.

- **Santa Fe Acquisition Company, LLC (Santa Fe)**. A newly formed entity owned by TPG VI and its affiliates that pursuant to the sale described above will purchase certain assets of PAC. Former Catellus Development Corporation (the original Bayport and Alameda Landing developer) employees will comprise the management team of Santa Fe and its subsidiaries, including Catellus, and will own the remaining interest in Santa Fe. As a result, there will be no major change to the project staff assigned to manage the Alameda Landing project. Santa Fe is also acquiring the names Catellus and Santa Fe. The new operation will be headquartered in Oakland, California.

- **Catellus Alameda Development, LLC (Catellus).** An indirect wholly owned subsidiary of Santa Fe, and the proposed assignee of the Alameda Landing Agreements. Upon assignment of the Alameda Landing Agreements; the Developer under the Alameda Landing DDA, Commercial DA and Residential DA, Permittee under the Permit, and Palmtree under the Property Exchange Agreement will become Catellus instead of PAC.

Alameda Landing is one of numerous assets of Santa Fe, which are expected to total over $400 million once the business agreement with ProLogis closes. Other assets include: the East Bay Bridge Shopping Center in Emeryville; Pacific Commons Shopping Center in Fremont; the Austin-Mueller Master Development Agreement in Austin, Texas; Airpark 599 Mixed-Use Master Development Agreement in Stockton; the Granada Shopping Center in Newport Beach; the Newport Landing Shopping Center in Newport Beach; Los Angeles Union Station in Los Angeles; among others.

B. Proposed Development Plan and Schedule for Alameda Landing Project

TPG VI has indicated that the assignment of the Alameda Landing Agreements will provide Catellus with the investment funds necessary to complete the design, engineering, and demolition for preparation of a site at Alameda Landing for sale to Target Corporation ("Target"). The estimated cost of this initial phase for Target is estimated to cost over $10 million.

Target has signed a letter of intent with Catellus for the purchase of approximately ten acres of land in mid-2012 for a 140,000-square foot store that is anticipated to be open for business in 2013. Additionally, Catellus has stated its intention to pursue amendments to the Alameda Landing DDA to facilitate the Target development. Catellus has also indicated that discussions with other key retail tenants are well underway, as are initial discussions with prospective homebuilders.

Catellus has not committed to any development obligations and specific timelines beyond those provided for in the Alameda Landing DDA schedule of performance. According to Catellus, the implementation of subsequent phases will be consistent with the Alameda Landing DDA and subject to Catellus' internal investment analysis and approval.

C. Recommended Approval of Assignment of Alameda Landing Agreements

Assignment of the Alameda Landing DDA, Permit, and Property Exchange Agreement require the consent of the CIC.

The Alameda Landing DDA provides for specified "Permitted Transfers," which are only permitted when there is a conveyance of all or a portion of the Alameda Landing property. Since no land conveyance is taking place at the time of these requested assignments, the assignment is not a "Permitted Transfer" under the Alameda Landing DDA and instead requires the CIC's consent, which in this instance, may be given or withheld in its sole and absolute discretion. If the CIC approves the assignment, then the assignment and assumption agreement of the Alameda Landing DDA shall be recorded concurrently with the approval. If the CIC disapproves, it must notify PAC, specifying the reasons for disapproval. PAC has the right to respond and the parties are obligated to meet and confer in good faith for a 30-day period to resolve the dispute. If the parties cannot achieve agreement, then each party is entitled to pursue the remedies provided in the Alameda Landing DDA. If PAC proceeds with the assignment without the CIC's consent, such assignment would be void and would constitute an event of default under the Alameda Landing DDA. If PAC does not proceed with the assignment and is not in default, then among other rights it has under the Alameda Landing DDA, it may elect to exercise its early termination right, which would trigger payment by the CIC to PAC for certain Stargell acquisition costs, which total over $7 million.

The Alameda Landing Commercial DA and Residential DA run with the land. In other words, the assignments do not require the consent of the City when there is a land conveyance. In this instance, land conveyances of the Alameda Landing property are expected, but not in the near future. As a result, PAC is requesting consent to the assignment and release from the obligations of the Commercial DA and Residential DA.

All other Alameda Landing project documents do not require consent, but are binding on successors and assigns.

Staff recommends that the CIC approve the requested assignment of the Alameda DDA, Permit, and Property Exchange Agreement and that the City approve the requested assignment of the Commercial DA and Residential DA for the following reasons:

1. TPG VI has expressed a desire to invest in the Alameda Landing project, and, in particular, to help facilitate the implementation of a first phase of development, which if successful, could bring Target to the City, and result in a significant increase in sales tax dollars to the City's General Fund. TPG VI has significant capital, which it could invest in this project.

2. ProLogis has decided to sell its assets consisting of mixed-used urban developments, including the Alameda Landing project, and no longer plans to manage this type of development.

3. The Catellus management team consists essentially of the same staff that has been working on the project over the last several years. As a result, the assignment should not result in any delays to implementation of the project due to project management issues.

As described above, TPG VI and Catellus have not yet provided operating agreements or other documentation evidencing the ownership relationships between TPG VI, Santa Fe and Catellus. As a result, staff recommends conditioning the assignments upon receipt of limited liability company agreements for the following entities: Santa Fe Acquisition Company, LLC, Catellus Holding, LLC and Catellus Alameda Development, LLC. TPG VI and Catellus have agreed to this condition to the extent the agreements remain strictly confidential and may be redacted by Catellus to protect proprietary or information Catellus deems commercially sensitive.

As part of the Assignment, PAC has also requested that the CIC and City approve Estoppel Certificates related to the Alameda Landing DDA, Commercial DA, and Residential DA. These certificates, in the form provided under the foregoing Alameda Landing Agreements, certify that the respective Alameda Landing Agreements are in full force and effect and are binding on the parties, that each agreement has not been modified or amended except as provided in the certificates, and that the requested party, PAC, is not in default (Exhibit 3). Staff also recommends approving the Estoppel Certificates.

FINANCIAL IMPACT

Approval of the Alameda Landing Agreements does not impact the City's General Fund. The proposed assignments do not change the CIC's financial obligations contained in the Alameda Landing Agreements.

ENVIRONMENTAL REVIEW

On December 5, 2006, the City Council adopted Resolution No. 14047 certifying the Supplemental Environmental Impact Report ("SEIR") for the Alameda Landing Mixed Use Development Project. On September 24, 2007, the Planning Board approved a first addendum to the SEIR. On May 6, 2008, the City Council and CIC approved a second addendum to the SEIR. The assignment of the Alameda Landing DDA, the Commercial DA and the Residential DA does not trigger the need for subsequent or supplemental environmental review pursuant to Sections 15162 and 15163 of the California Environmental Quality Act Guidelines and Section 21166 of the Public Resources Code.

RECOMMENDATION

Approve execution of Estoppel Certificates and consent to assignments of the following documents conditioned upon receipt of entity relationship information:

1. The Alameda Landing DDA
2. The Commercial DA
3. The Residential DA
4. The Permit
5. The Property Exchange Agreement

Respectfully submitted,

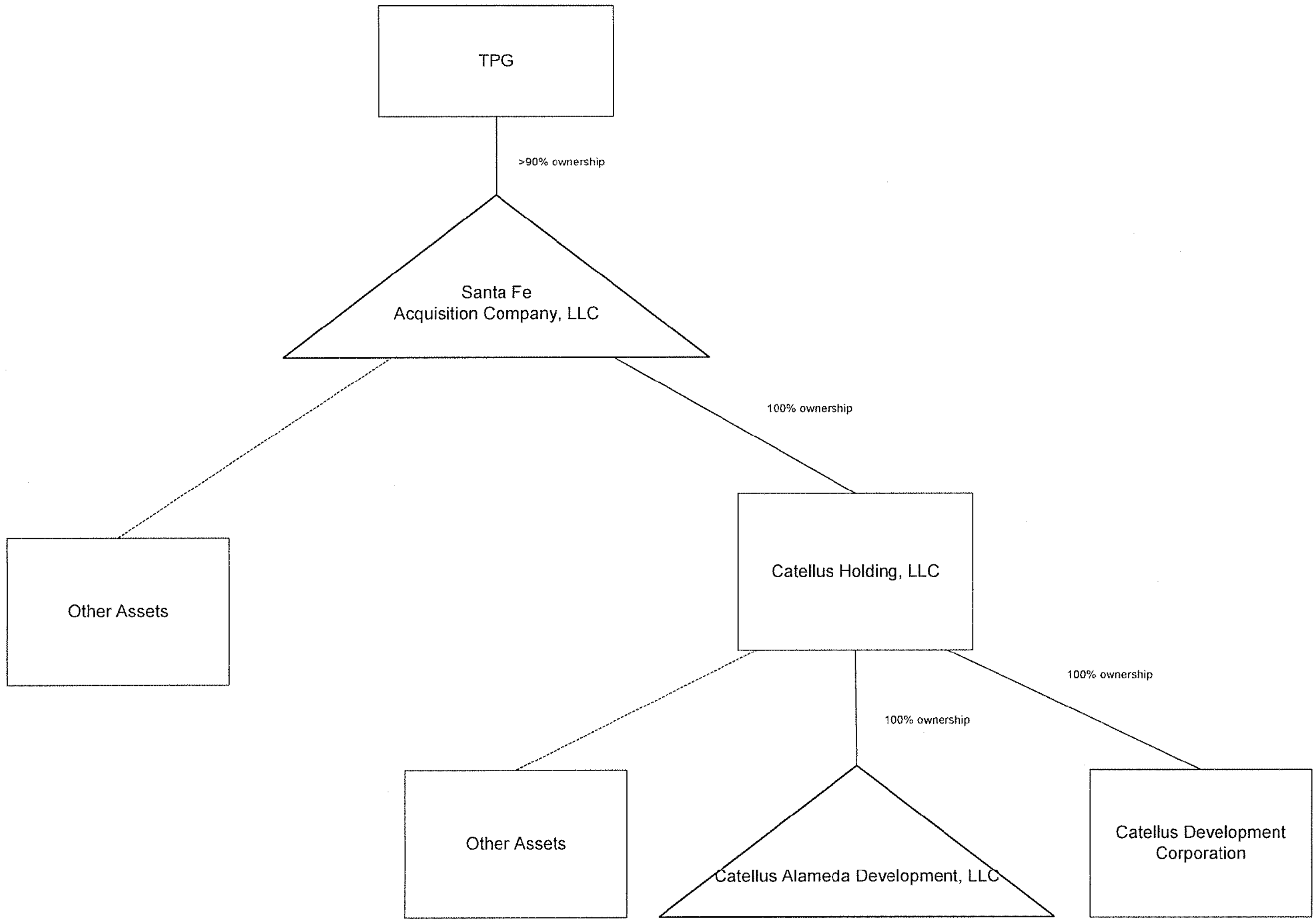
Jennifer Ott
Deputy City Manager

Exhibits:

1. Assignment and Assumption Agreements (on file in the City Clerk's Office)
2. Organizational Chart for TPG VI/Catellus Entities Related to Assignment of Alameda Landing Agreements
3. Estoppel Certificates (on file in the City Clerk's Office)

Project Santa Fe – Structure Chart - Alameda

DRAFT 1/28/11



**CC/ARRA/CIC
Exhibit 2 to
Agenda Item #3-B
02-15-11**